

Yahya Vs. State of Kerala

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Court : Kerala

Decided On : Aug-26-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Yahya

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 26^H DAY OF AUGUST 2014 4TH BHADRA, 1936 CrI.MC.No. 4425 of 2014 ----- C.C.NO. 604/2014 OF CHIEF JUDICIAL MAGISTRATE COURT, KASARAGODU ----- PETITIONER / ACCUSED : ----- YAHYA, AGED 39 YEARS, S/O.USMAN, RESIDING AT ZOHRA MANSIL, SANNADAKA ROAD, KUNJATHUR P.O. VIA, MANJESWARAM, KASARGODU DISTRICT. BY ADV. SRI.P.A.ABDUL JABBAR RESPONDENT / COMPLAINANT : ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.P.MAYA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/08-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Msd. CrI.MC.No. 4425 of 2014 ----- APPENDIX PETITIONER(S)' ANNEXURES: ANNEXURE-A1: TRUE COPY OF THE

JUDGMENT

numbers 1 & 2 were convicted in the case but later, their sentence was modified by the appellate court. The petitioner has come to India on leave and his visa will expire by December 2014. He has to join duty before that day. For the last 10 years, he was facing trial. So, he wants the interference of this court to see the case is disposed of on or before 01.12.2014. So, the petitioner has no other remedy except to approach this court seeking the following relief: "To call for the records relating to the case CC No.604/2014 which was originally registered as C.C.No.464/2003 CrI.M.C.No.4425 of 2014 :

3. : pending on the files of the Chief Judicial Magistrate Court, Kasargodu, and direct the court below to complete the trial and dispose of the said case against the petitioner on or before 01.12.2014." 3. Heard the Counsel for the petitioner and the learned Public Prosecutor. I have called for a report from the Chief Judicial Magistrate, Kasaragod regarding the present stage of the case and also the time required for disposal of the case and the learned Chief Judicial Magistrate has sent a report which reads as follows: "C.C.604/14 is a case refiled from LPC.45/14 on 17-7- 2014. In original case ie.CC.464/03, accused '3' in numbers were charge sheeted by the S.I of Police Manjeshwar P.S in Cr.No.119/2003 for offence u/s 332 r/w 34 IPC. The petitioner was the 3rd accused in CC.464/2003. A1, A2 had appeared and they were found guilty on 27-7- 2007 for the offence u/s 332 r/w 34 IPC. A1 was sentenced to undergo R.I for 2 years and to pay fine of Rs.5000/- with IDSI 6 months. A2 was sentenced to undergo S.I till rising of the court and to pay fine of Rs.1,000/- IDSI for 6 months. Since A3 was absconding, case against him was split up and refiled as CC.605/2007. The case CC.605/2007 was transferred to the Long Pending case register as LPC No.152/07 on 31.07.2007. Subsequently the accused surrendered before this court on 28-4- 2010 and case was refiled as CC.259/10. Again accused had absconded and case transferred to long pending case register as LPC.45/14. Charge was framed against the accused on 7-5-2012 in CC.259/10. Present case ie, CC.604/14 is posted to 14.10.2014. There are 10' witnesses in the case and case is of the year 2003. The material witnesses are official witnesses, who might have retired from service by this time. Procuring their presence will be a heavy task. However, the case can be disposed of within a period of six months from 14.10.2014. CrI.M.C.No.4425 of 2014 :

4. : The above facts are respectfully submitted for kind consideration." 4. The Counsel for the petitioner submitted that he was facing trial for the last 10 years in this case and though he came to India to face trial on two occasions, due to no fault of his, the case has been adjourned and now he is prepared to face the trial. But, he is having only a limited time up to first week of December 2014 and he will have to go in the first week of December. So, he prayed for allowing the application.

5. The application was opposed by the Public Prosecutor on the ground that he himself was responsible for the delay.

6. It is an admitted fact that the petitioner has been arrayed as 3rd accused in Crime No.119/03 of Manjeshwaram Police Station along with other accused persons alleging offences under Section 332 read with Section 34 of Indian Penal Code and after investigation, final report was filed and it was originally taken on file as C.C.No.464/03 and accused numbers 1 & 2 appeared and they faced trial and the case against them was ended in conviction. Since the present petitioner was absconding in that case, case against him was CrI.M.C.No.4425 of 2014 :

5. : split up and refiled as C.C.No.605/07. Later, since the petitioner did not appear, it was transferred to register of long pending cases as L.P.C.No.152/07. Thereafter, again he came and surrendered and it was re filed as C.C.No.259/10. Since again he absconded, it was again transferred to register of long pending cases as L.P.C.No.45/14 and he absconded after the charge was framed on a later occasion. Now, since he surrendered, it was again refiled as C.C.No.604/14 and now posted to 14.10.2014.

7. It is true that on an earlier occasion, when he surrendered, the case though re filed as C.C.No.259/10, the case could not be proceeded against him as later, he again went abroad after getting the passport from the court and thereafter, he did not co-operate with the trial of the case. It is true that Article 21 of Constitution of India mandates speedy trial as a right for the accused who are facing criminal prosecution. But, at the same time, they are also expected to co-operate with the disposal of the case. In fact, if they themselves are responsible for the delay, then, court cannot be blamed for late disposal of the case especially when in this case,

accused Nos.1& 2 have faced trial and they were Crl.M.C.No.4425 of 2014 :

6. : convicted and their appeal is also over. If he had co-operated with the trial of the case along with accused Nos.1 & 2, by this time, the trial of the case would have been completed as against him as well. However, considering the fact that the case is of the year 2003, and also considering the fact that he has to go abroad before December 2014 and the trial of the case should not be a hurdle for him to pursue his employment, though it is not possible for this court to direct the court below to dispose of the case as requested for by the petitioner on or before 01.12.2014, this court feels that considering the long pendency of the duration of the case and also considering the fact that only 10 witnesses will have to be examined, the petition can be disposed of as follows: The Chief Judicial Magistrate, Kasaragod is directed to take all steps to expedite trial of the case as expeditiously as possible at any rate within three months from the date of receipt of this order. The learned magistrate is directed to advance the hearing on receipt of this order or if it is produced by the accused and ask for advance the hearing, that can be considered and thereafter, dispose of the case as expeditiously as possible within the time directed by this court. With the above direction and observation, the petition is disposed of. Crl.M.C.No.4425 of 2014 :

7. : Office is directed to communicate this order to the concerned court immediately. Hand over a copy of the order to the Counsel for the petitioner also so as to enable him to produce before the learned Chief Judicial magistrate for further necessary action in this regard. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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